

ARNIE M. SANDERS

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MARCH 19, 1958.—Committed to the Committee of the Whole House and ordered  
to be printed

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Mr. LANE, from the Committee on the Judiciary, submitted the  
following

R E P O R T

[To accompany H. R. 7733]

The Committee on the Judiciary, to whom was referred the bill (H. R. 7733) for the relief of Arnie M. Sanders, having considered the same, report favorably thereon with an amendment and recommend that the bill, as amended, do pass.

The amendment is as follows:

Page 1, line 6, strike "\$701.40" and insert in lieu thereof "\$550.93".

PURPOSE

The purpose of the proposed legislation, as amended, is to pay Arnie M. Sanders, of Madison, Wis., the sum of \$550.93 in full settlement of his claims against the United States for the loss at sea in 1944 of the personal effects of his son, 1st Lt. Malcolm S. Sanders.

STATEMENT

Mr. Arnie M. Sanders was notified by a letter dated May 31, 1944, that the personal effects of his son, 1st Lt. Malcolm S. Sanders, had been lost at sea in transit to the United States. At the time Lieutenant Sanders was missing in action, and he later was concluded to have been killed in action over China. Mr. Arnie Sanders requested that he be sent forms in order to file a claim for the loss of his son's personal effects. He did submit such a claim in the amount of \$701.40, dated August 30, 1947. The figure of \$701.40 was Mr. Arnie Sander's estimate of the total value of each item listed on an inventory of Lieutenant Sander's effects. These items were subsequently estimated by a United States Army claims officer to be of a value of \$550.93. In a letter dated April 1, 1948, Mr. Sanders was informed that such claims had to be submitted within 1 year after the loss

except in time of war for good cause shown. His application for such consideration on the basis of his lack of knowledge of his rights was denied. Subsequently legislation provided for an extended period for consideration of similar claims, but unfortunately again Mr. Sander's claim was too late.

This committee has concluded that this matter is a proper subject for legislative relief. There is no question but that the amount found by the Army, \$550.93, is the amount justly due Mr. Sanders. If his claim had been filed in apt time this is the amount which would have been paid him. As is observed in the Army report to this committee on the bill, the Government has not been prejudiced by the passage of time, for the facts were clearly established. As a result the Army has advised this committee that it would have no objection to the enactment of the bill. Accordingly the committee recommends the favorable consideration of the bill, amended in accordance with the recommendation of the Department of the Army so as to provide for a payment of \$550.93.

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DEPARTMENT OF THE ARMY,  
*Washington, D. C., February 10, 1958.*

HON. EMANUEL CELLER,  
*Chairman, Committee on the Judiciary,  
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 7733, 85th Congress, a bill for the relief of Arnie M. Sanders.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to Arnie M. Sanders, Madison, Wisconsin, the sum of \$701.40. The payment of such sum shall be in full settlement of all claims of the said Arnie M. Sanders against the United States on account of the loss at sea in 1944 of the personal effects of his son, First Lieutenant Malcolm S. Sanders (serial number O728513)."

The Department of the Army has no objection to the enactment of this bill provided it is amended as hereinafter specified.

Records of the Department of the Army reveal that Mr. Arnie M. Sanders was notified by letter dated May 31, 1944, that the personal effects of his son, 1st Lt. Malcolm S. Sanders, then listed as missing in action and later concluded to have been killed in action over China, had been lost at sea in transit to the United States. By letter dated September 6, 1946, directed to the Claims Division, Office of The Judge Advocate General, Department of the Army, Mr. Sanders requested the forms and information necessary for filing a claim for this loss. By W. D. Form 30B, subscribed August 30, 1947, Mr. Sanders submitted an itemized claim in the amount of \$701.40, reflecting his estimate of the value of each item listed upon the summary court officer's inventory of Lieutenant Sanders' personal effects. These items were subsequently estimated by a United States Army claims officer to be of a value of \$550.93.

By letter dated April 1, 1948, Mr. Sanders was informed that Army regulations required the submission of such claims within 1 year after the occurrence of the loss, except in time of war for good cause shown.

Mr. Sanders was requested to submit any evidence which would establish good cause for his failure to seasonably file his claim. In reply, Mr. Sanders stated that he had not filed his claim more promptly because he had been unaware of his right to such compensation until so advised by a representative of the Veterans' Administration. By letter dated August 11, 1948, Mr. Sanders was informed that his claim was denied as his file disclosed that he was notified of the loss on May 31, 1944, but did not file a claim until August 30, 1947, and had not established good cause for the delay. Mr. Sanders' appeal from this decision was denied by the Office of The Assistant Secretary of the Army by letter dated September 22, 1948.

The act of July 3, 1943 (57 Stat. 372; 31 U. S. C. 233b), the only statute under which this claim when submitted could have been favorably considered, then provided pertinently as follows:

"No claim shall be settled under this Act unless presented in writing within one year after the accident or incident out of which such claim arises shall have occurred: *Provided*, That if such accident or incident occurs in time of war, or if war intervenes within one year after its occurrence, any claim may on good cause shown be presented within one year after peace is established."

Subsequent to the denial of his appeal, Mr. Sanders communicated with the President of the United States in regard to the matter. The inquiry was referred to the Department of the Army which replied by letter to Mr. Sanders under date of May 10, 1949, pertinently as follows:

"Since your claim was not filed within the time required by law it was necessarily disapproved.

"There is now pending in Congress legislation which, if enacted, will permit the reconsideration of claims of this character. If such legislation is enacted your claim will be given prompt reconsideration."

By letter under date of August 7, 1950, Mr. Sanders stated that he had received information that claims such as his were then being reconsidered. He was advised by letter dated August 28, 1950, from Claims Division, Office of the Judge Advocate General, Department of the Army, that there was no statute under which his claim could be paid.

On July 2, 1952, the President approved Public Law 439, 82d Congress (66 Stat. 322), which provided pertinently as follows:

"\* \* \* That any claim cognizable under this Act which \* \* \* has been presented for consideration and disapproved for the reason that the claimant did not file such claim within the time authorized by law \* \* \* may, at the written request of the claimant made within one year from the date of the enactment of this amendatory Act, be considered or reconsidered and settled in accordance with the provisions hereof."

By letter dated June 7, 1955, Mr. Sanders requested information as to whether the pending legislation referred to in the Department of the Army letter of May 10, 1949, *supra*, had been enacted. By letter dated July 13, 1955, the Claims Division, Office of the Judge Advocate General, Department of the Army, advised Mr. Sanders pertinently as follows:

"On July 3, 1952, Congress passed Public Law 439, which in pertinent part provided that claims of the nature of yours could be paid provided written request for reconsideration was made on or before

July 3, 1953. Your letter of June 7, 1955 does not meet the requirement of the law. Therefore, this office has no alternative other than to reaffirm its previous decision of disapproving your claim."

Mr. Sanders' failure to file a claim within the required statutory periods resulted from his lack of knowledge of the existence of his remedy. The Department of the Army has uniformly applied the principle that lack of knowledge on the part of a claimant of the existence of a statute under which his claim could be considered does not constitute "good cause" for delay in filing the claim. This policy is based upon the opinion that any other rule would result in widespread nullification of the statutory period of limitations.

It has been stated that "The purpose of the statute of limitations is to require any necessary litigation to be brought within such time as the particular facts and circumstances may be proved with the utmost certainty and before adequate proof has become stale or entirely lost" (34 Am. Jur. sec. 9 (Cum. Supp. 1956)). Accordingly, the Department of the Army is not generally opposed to legislation designed to pay an established claim barred by the expiration of the statutory period for filing, where no prejudice to the Government has resulted from the delay. In the instant case it appears that the Government has full information upon which to base an adjudication of this claim and, consequently, the Department has no objection to the enactment of legislation which would enable Mr. Sanders to receive just compensation for the loss incurred. However, there is a conflict between the award provided in subject bill (\$701.40) and the valuation placed upon the lost property by the Army claims officer (\$550.93). It would appear that this difference arises from the failure of the claimant to properly depreciate the initial cost of the items to reflect their value at the time of loss. Accordingly, the Department of the Army recommends that the award in this bill be reduced in amount to \$550.93.

The cost of this bill, if enacted in its present form, will be \$701.40, but if enacted as recommended, will be \$550.93.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,  
*Secretary of the Army.*

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